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**EXCEPTED SERVICE**  
**Historical Review of FBI Status**

Being excepted from the established practices of the competitive service as relates to recruitment, promotion and internal placement, and adverse action, provides the Director with a degree of flexibility in managing the personnel resources of the FBI in order to better insure its effective functioning.

When J. Edgar Hoover agreed to assume the responsibility of directing the FBI in 1924, he did so with the specific understanding that there be no political interference and that he have the authority to establish and enforce high qualification standards for employment. Initially, most positions in the FBI were excepted from the competitive civil service. Fingerprint examiners and some clerical positions, remained under the competitive service. During the late 1930s attempts were made by the Civil Service Commission (CSC) (later renamed the Office of Personnel Management (OPM)) to place all non-investigative positions under the competitive service.

The FBI avoided such attempts by initiating legislative endeavors which resulted in Executive Order 8768 dated 6/3/41, signed by President Roosevelt, which excepted all positions in the FBI from the competitive service. It should be noted here that the Civil Service rules and regulations at that time were limited in nature and it was our opinion that our personnel system, which was based solely on merit, was far superior to that of the CSC.

Our concerns before 1941 centered around the difficulty we were encountering in hiring individuals provided

from eligible lists from the CSC. The lists were not provided in a timely manner, unqualified individuals were included, and CSC background investigations were inadequate. We were unable to request a list of eligibles before we had an actual vacancy and if we wanted to move an employee from one line of work to another, the employee was required to take and pass the non-competitive examination given by CSC. The CSC did not allow us to administer our own typing and stenographic tests to determine skill levels even though the tests afforded by CSC may have been given three to four years earlier.

The nature of the FBI's responsibilities required that the best possible workforce be available at all times. It appeared that our efforts to accomplish this were being hindered, at the time, by the CSC. When all positions were placed in the excepted service, steps were initiated to insure that our personnel practices provided a means to appoint only highly qualified, motivated and dedicated individuals; reward those whose work performance so warranted; and discipline and remove those who failed to meet prescribed minimum standards of performance and conduct. Specific information concerning each of these areas is set forth in the following paragraphs.

#### RECRUITMENT AND HIRING

The FBI conducts its own recruiting efforts and is not hampered by the slower appointive process of the competitive service. Extensive interviews, full field background

investigations, testing and complete physicals are all required before final appointive action is taken at Headquarters. The FBI follows a policy of scrupulously insuring that appointments are made without regard to race, color, creed, national origin, sex or physical handicap and gives preference to veterans. We are not required to adhere to OPM qualification standards although we may use them as a guide. Because of our excepted status we may determine our own qualifications and standards for appointing individuals, support or agent. For example, most competitive agencies could not appoint a Clerk-Typist with limited experience who passes a 40 wpm typing test at grade GS 4, as we do. Under OPM qualifications standards this individual would warrant a grade GS 2 or GS 3 and would not attain grade GS 4 until one year of work experience. This small liberty gives us some advantage in recruiting a sufficient number of typists to fulfill our needs, while still maintaining the quality individual that we require.

#### PROMOTION AND INTERNAL PLACEMENT

Since a bonafide promotion and internal placement system for the Federal service was not developed by CSC until 1954, we developed our own which was based upon a combination of qualifications, merit and work performance. Our system fell within the guidelines that were finally set by CSC, and no reason was seen to change ours for theirs. The FBI promotion program was directly tied to performance and no one was promoted unless they were appraised above the satisfactory

level. Refinements to our system evolved over the next 20 years in both the investigative and support ranks. We adhered to our original basic policies of promotion within the FBI based on merit and fitness. We have enhanced our procedures to include the posting of available vacancies, automating an employee skills bank, and adopting a specialized testing battery designed to measure oral and written communications skills. Special Agent career paths were defined to provide for the continuation of sound management within the FBI. These steps have provided motivation and encouraged upward mobility for our employees. They have also provided management the full use of their knowledges, skills and abilities.

#### SUPERGRADES

Title 5, United States Code, Section 5188(c)(2), statute and the personnel authorities provided in Title 28, Code of Federal Regulations, Subpart X, Section 0.37, are the basis for the Director's ability to appoint, promote, demote, assign and otherwise manage the supergrade manpower of the FBI.

For the competitive service, the OPM provides for the control and establishment of supergrade positions throughout the government. The FBI has traditionally been exempted from this control. The number of supergrade slots has been increased over the years through Congressional actions as our responsibilities increased. The present 140 number limitation was approved by P. L. 91-187 effective 12-30-69.

The Civil Service Reform Act of 1978 created for the Federal Government the Senior Executive Service (SES). The SES encourages supergrade mobility between agencies and rewards superior performance with various pay incentives. The rotation of top level management from agency to agency is unworkable for the FBI where past organizational knowledge is so vital to the accomplishment of our mandated responsibilities. The vast experience gained by our executives in virtually every phase of our operations makes them uniquely qualified for the responsibilities vested at that level. Individuals from outside the FBI, because of this lack of experience, would not qualify as an executive of the FBI, and we certainly would not benefit from such an exchange, since we would lose our most talented employees.

In view of the above, even though the pay incentives were very attractive, the FBI was successful in obtaining an exclusion from the SES. The Civil Service Reform Act did repeal the Director's authority to appoint supergrades; however, the conference report of this Act noted that it was the understanding of the conferees and the Administration that there was no intention to reduce the number of FBI supergrade positions at that time.

On 4/30/79, President Jimmy Carter, by letter, authorized the Director of the FBI, pursuant to Section 5108 (a) of Title 5, United States Code, to place a total of 140 positions in the FBI into grades GS 16, 17 and 18. Thus, the statutory authority of the Director to appoint up to 140

supergrade officials was revested in the Director. However, any future increase of supergrade positions beyond the 140 authorized will require Presidential authorization.

### DISCIPLINARY ACTIONS

#### Current Administration

The existing administrative structure regarding the FBI's disciplinary system dates back to 1976 with the creation of the Office Of Professional Responsibility (OPR) and the establishment of the Administrative Summary Unit (ASU), ASD. Under current policy, all allegations of "serious" misconduct are investigated by or through OPR. Investigations of "criminality" on the part of FBI employees are generally conducted by or under the direction of the Criminal Investigative Division (CID) in coordination with OPR. All other administrative inquiries are handled by the respective Headquarters or Field Division to which the employee involved is assigned and coordinated directly by the ASU, ASD. Once completed, all investigations involving employee misconduct or criminality are referred to the ASU, ASD, where the "resolution" phase of the process begins. The principal mandate of ASU involves the formulation of appropriate disciplinary recommendations which are acted upon either by the Personnel Officer, Assistant Director, ASD,

NOTE: On 6/14/85 the Director submitted a request to the Attorney General to be forwarded to Office of Management and Budget recommending the Director be granted authority to allocate 20 additional supergrade positions.

Executive Assistant Director - Administration or the Director, pursuant to established levels of delegation which are predicated on the personnel involved and the gravity of discipline that is being imposed.

In addition to disciplinary actions that emanate from misconduct or criminality, final actions that are the product of unacceptable performance ratings are also processed through the ASU for appropriate recommendations after being certified by the Performance, Recognition and Awards Unit (PRAU), ASD, for substantive and procedural compliance.

#### Procedural Entitlements and Policies

Pursuant to Title 28, U. S. Code, Section 536, all FBI employees are part of the excepted service. As such, the FBI is not bound by the procedural requirements that have been established by statute and regulations concerning misconduct based disciplinary actions regarding competitive service employees with the exception of adverse actions (suspension of more than 14 days) against preference-eligible veterans. Simply stated, this means that absent some other statutory or constitutional restriction, there are no limitations on the discretion of the Bureau to discipline its employees. By contrast, competitive service employees can be disciplined "only for such cause as will promote the efficiency of the Service" (Title 5, U. S. C., Section 7513). Moreover, Title 5, Code of Federal Regulations (CFR), Chapter 75, sets forth very specific procedural entitlements concerning competitive service



employees and preference-eligible veterans in the excepted service. As a matter of policy, several of these procedures or a version thereof have been incorporated into the disciplinary practices of the FBI regarding all employees. Specifically, those procedures dealing with basic "due process" considerations to include a specific notice of the charge involved, an opportunity to respond and in the case of a proposed removal, a written notice of such action were incorporated into and were formally noticed to all employees by Memorandum from the Director, dated May 15, 1981. In this same memorandum the Director also specifically promulgated an "extraordinary matters" policy setting forth that "exceptions to these general procedures and necessary action may be taken without delay for reasons of security; to resume order; for the safety of persons or property; or for other reasons." All of the procedures enumerated in Title 5, CFR, Chapter 75 are explicitly followed with regard to adverse actions against preference-eligible veterans.

As to appeal rights, all FBI employees may appeal any disciplinary action to the Director or file an action in U. S. District Court. In this regard it is noted that the basis upon which a public employee can predicate a cause of action in Federal court is very narrow. The traditional "property" right to employment has been held to apply only to tenured positions where there is an expectancy of continued employment in the

absence of "cause." Excepted service employees do not have a property right because there is no statutory provisions limiting their removal to "cause" as previously noted. Moreover, in a recent U. S. Supreme Court case concerning what "due process" is required by the constitution prior to depriving a tenured public employee of employment, it was held that the employee must be given notice and explanation of the charges and an opportunity to present a response (Loudermill v. Cleveland Board of Education, 53 U.S.L.W. 1306, March 19, 1985). As previously noted, although not required because of our excepted status, this practice is nevertheless followed as a matter of policy by the FBI.

Preference-eligible veterans may file an appeal to the Merit Systems Protection Board (MSPB) in those situations involving adverse action pursuant to Title 5, CFR, Chapter 75.

#### Performance Based Actions

With the passage of the Civil Service Reform Act (CSRA) of 1978, Congress specifically legislated the manner in which "performance" was to be measured in the Federal workforce. The regulations that followed and the judicial decisions since its passage clearly state that the Federal agencies covered by the Act are required to address work related or performance deficiencies under the mandated performance appraisal system. That is, employee work deficiencies and the remedies or "discipline" employed to correct them must be effected under the provisions of the CSRA as distinguished from the traditional "misconduct" approach. Functionally, this means that "unacceptable" performance must

be addressed under the provisions of the CSRA which contain very specific procedural entitlements to include a specific declaration of unacceptable performance, a demonstration period, etc., before a remedy can be effected. The "remedies" under the CSRA are reduction in grade, reassignment or removal from the rolls. With regard to appeal rights, as with misconduct based actions, preference-eligible veterans have a right to appeal adverse actions to the MSPB under 5 CFR, Chapter 43.

Set forth below is a summary of actions that have been instituted by the FBI since the passage of the CSRA based upon an unacceptable Performance Appraisal Report (PAR) through calendar year 1984.

	<u>1982</u>	<u>1983</u>	<u>1984</u>
<b>Total</b>	17	37	24
<b>Clerks</b>	16	37	22
<b>Agents</b>	1	0	2
<b>Actions Taken</b>			
<u><b>Demoted</b></u>			
<b>Clerks</b>	13	26	16
<b>Agents</b>	1	0	1
<b>Total</b>	14	26	17
<u><b>Retained</b></u>			
<b>Clerks</b>	0	3	2
<b>Agents</b>	0	0	1
<b>Total</b>	0	3	3
<u><b>Dismissed</b></u>			
<b>Clerks</b>	0	0	1
<b>Agents</b>	0	0	0
<b>Total</b>	0	0	1
<u><b>Resigned</b></u>			
<b>Clerks</b>	3	8	3
<b>Agents</b>	0	0	0
<b>Total</b>	3	8	3
<b>Assigned</b>			
<b>Headquarters</b>	14	33	17
<b>Field</b>	3	4	7

Pending Legislation

Proposed legislation (HR 917) has recently been introduced by Congressman Mervyn M. Dymally (CA) which would vest Federal employees in the excepted service with the same procedural entitlements afforded to employees in the competitive service after two years of service "with respect to certain adverse personnel actions." The effect of this legislation, if ratified, on existing personnel practices from a disciplinary perspective could be profound. As previously noted, while certain "due process" type procedures have been incorporated into our existing procedures as a matter of policy, certain entitlements set forth in Title 5, CFR, Chapter 75, which are applicable to the competitive service such as the right to Counsel during the administrative process, an appeal to the MSPB and the right to access the agency "record" upon which the action is based have been specifically excluded except in adverse action cases involving preference-eligible veterans. Moreover, under the "extraordinary" circumstances provision of our current policy, the Director has reserved the ability to take summary type action regardless of existing policy entitlements in certain situations as previously set forth. The proposed legislation would remove virtually all discretionary authority that the FBI now retains regarding the procedural entitlements of non-preference-eligible employees.

Disciplinary Trends

Set forth below is a statistical table reflecting a breakdown of all disciplinary actions handled during the past five calendar years.

	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
Total Inquiries	2262*	1445*	1003	1381	1201
Actions Taken	786 (34.7%)	819 (56.6%)	603 (60.4%)	774 (56.0%)	761 (63.3%)
Adverse Actions	22	27	46	68	52
<u>Dismissals</u>					
Clerks	11	11	4	13	8
Agents	2	3	6	5	4
Total	13	14	10	18	12
<u>Demotions</u>					
Clerks	1	5	19	30	17
Agents	2	6	7	1	2
Total	3	11	26	31	19
<u>Suspensions</u>					
Clerks	1	0	4	4	1
Agents	5	2	6	15	20
Total	6	2	10	19	21
No Action Taken	**	**	340	540	379
Resignations During Administrative Inquiry	20	56	60	67	61
Clerks	**	**	56	51	52
Agents	**	**	4	16	9

\*Total figures cited for 1980 and 1981 are approximate.

\*\*Not available.

**OBSERVATIONS:**

- (1) The number of actions taken in relation to the total handled has increased.

Example: 34.7% in 1980  
63.3% in 1984

- (2) The number of adverse actions (suspension for more than 14 days) has increased considerably.\*

Example: 22 in 1980  
52 in 1984  
(record high of 68 in 1983)

\*This is attributable in some measure to Chapter 43 actions (Performance Appraisal). More specifically, since the passage of the Civil Service Reform Act there have been 78 actions instituted under the performance appraisal system, 57 of which have resulted in a reduction in grade.

- (3) Resignations during administrative inquiry have increased dramatically during the 5-year period.\*

Example: 20 in 1980  
61 in 1984

\*When combined with the number of dismissals during this same period, a trend of increased severity of administrative action emerges. More specifically, in 1980 a total of 33 employees (20 resignations; 13 dismissals) left or were removed from the rolls of the FBI. This figure represents 1.4% of the total inquiries handled. In 1984, 73 or 6.0% (12 dismissals; 61 resignations) of the actions processed resulted in a loss of the employee from the rolls.

### EMPLOYEE BENEFITS

Regardless of our excepted status, FBI employees are entitled generally to employee benefits guaranteed by various statutes. They include restoration to duty following military service, training, performance appraisal incentive awards, classification, pay, leave, injury compensation, retirement, unemployment compensation, and life and health insurance.

While the FBI was excluded because of its excepted status from many of the laws and regulations passed over this time period, it was subject to some. For example, the provisions of the Whitten Amendment applied to all Federal agencies in the competitive as well as the excepted services and limited excessively rapid promotions. The provisions of the Whitten Amendment expired on 9-14-78, however, the FBI chose, as did the Department of Justice and OPM, to continue similar restrictions for purposes of continuity, position management, average grade and salary cost control.

### POSITION CLASSIFICATION

The FBI is covered under the Classification Acts of 1923 and 1949, and no documentation was located that an attempt was made to exclude us from the provisions of same. The legislation directs that positions, regardless of grade level, shall be classified according to a system common to all Departments of the Executive Branch of the Government and that uniform rules for determining proper grade levels of positions shall be used. Under this legislation FBI employees have full

appeal rights regarding classification decisions involving the positions currently occupied. Few standards were in existence before 1950, and the FBI was one of a few agencies which adhered to the basic principles of equal pay for substantially equal work. Each agency wrote their own position descriptions with assistance and concurrence of the CSC. The Classification Act of 1949 was more than a classification and pay measure. It was, in fact, a major statute governing administrative management of the Federal service. It crystalized the trend to a department responsibility for personnel transactions with the central personnel agency (CSC/OPM) becoming a standard setting and review agency. CSC had the responsibility to inspect all personnel practices for agencies in the competitive service, and conducted same on a regular basis. We had our own internal inspection of personnel practices and the only areas that the CSC were authorized to inspect were hiring practices of veterans and classification of the FBI's positions. These inspections have decreased in recent years, however, OPM still has the right to inspect the way we classify our positions and order corrective actions if necessary.

#### PERFORMANCE APPRAISAL

Historically, the FBI designed performance appraisal plans to comply with legislation such as the Uniform Efficiency Rating Act of 1935, the Performance Rating Act of 1950, and the Civil Service Reform Act (CSRA) of 1978. There is no



indication in our files that we ever sought an exemption from the performance appraisal provisions of these statutes which covered all Executive agencies except those specifically excluded such as the CIA.

The FBI consistently proposed and received approval for performance appraisal policy in accordance with applicable Civil Service Commission and Department of Justice guidelines, but, more importantly, consistent with the needs of the Bureau. In this regard, the FBI proposed variations to Departmental policy or separate systems to insure the needs of the Bureau were met.

In the 1940s, all employees were rated on their knowledge, judgment, initiative, force, industry, accuracy, personal appearance, and attitude toward work. In addition, investigative employees were rated on their paperwork and executive capacity. These ratings were based on a comparison of all employees in the same position and grade. The following five adjectives were used for overall ratings: Excellent, Very Good, Good, Fair, and Unsatisfactory.

Following are some examples of the uses of performance rating information. Employees who were rated Fair or Unsatisfactory were subject to salary reduction if they were paid above the middle of the rate range for their grades. In order to be considered for promotion, investigative employees had to be rated Excellent. All offices were reminded to consider employees' total work record, specifically including

department and disciplinary actions, in arriving at overall adjective ratings. Particular emphasis was given to the weight which should be afforded in ratings and promotional considerations for employees found guilty of misconduct.

In the 1950s, employees continued to be rated on traits of performance, such as those noted above, but the number of adjectives used for overall ratings was reduced from five to the following three: Outstanding, Satisfactory, and Unsatisfactory. This reduction in the number of levels was based on the provisions of the 1950 law which was intended to correct the undesirable trend of inflating ratings. There is no data in our files reflecting the distribution of the ratings under the old five level system.

Narrative comments were required for all Outstanding and Unsatisfactory ratings. It is noted that, in the early 1950s, offices were challenged for the submission of unsupported Outstanding ratings. Also of interest is the advice received from Civil Service Commission personnel regarding the removal of employees. The new rating plan restricted the basis for removal to "official" Unsatisfactory ratings which were only submitted annually (3/31 and 9/30 for investigative and clerical employees, respectively). The Commission representative encouraged the FBI to initiate the removal of employees "on charges" rather than waiting to apply the rating process.

The effectiveness of the anti-inflation aspects of the new rating system can be seen in the following summary of the 1955 annual ratings for all investigative employees: seven - Outstanding; two - Unsatisfactory; all others - Satisfactory. Criticisms, from within and outside the FBI, at that time centered on the fact that performance ratings were meaningless since virtually all employees were "Satisfactory." In May, 1955, the FBI requested the Department to pursue with the Commission, on our behalf, the authority to add another level (Excellent) between Satisfactory and Outstanding. The Department delayed the submission of our request to the Commission until September, 1956, but notified us of the Commission's approval of the fourth level in early December, 1956.

During 1956, another proposal, to review and use clerical employees' position descriptions in the rating process, was made and approved. Early in 1957, manual revisions were published, defining the new Excellent level and instructing rating officials to compare job requirements (as set forth in job descriptions) with employees' actual performance in arriving at ratings, as opposed to comparing employees in the same position with each other.

Throughout the 1950s and 1960s, offices were periodically reminded to consider such factors as administrative action taken against employees, physical condition (limited duty status), compliance with weight

standards and amount of overtime worked in comparison to office average, in determining the ratings for individual element and overall ratings. In the mid-1970s, efforts were made to ensure that all such matters being considered, particularly administrative actions, were, in fact, work-related and, therefore, proper influences on performance ratings. These efforts resulted from reviews of specific cases, examination of then current policy and contacts with the Commission relative to our compliance with the Performance Rating Act of 1950.

It was determined that the mechanical establishment of an adjective rating level, e.g., no more than Satisfactory if censured and placed on probation during the annual period, without regard to otherwise commendable performance, was not in the best interest of an effective rating system. It was also determined that an employee's official performance rating should not be influenced by off-duty conduct unless such conduct clearly affected the employee's work performance. In pursuing this matter, the influence of official performance ratings and disciplinary actions on personnel decisions was also addressed. For example, it was found that a within-grade increase could be denied if an employee was on probation for performance deficiencies but not if the probation was for off-duty conduct unrelated to performance. The employee's total record, though, could be reviewed and considered in making promotional and administrative advancement decisions.

The CSRA of 1978 mandated the establishment of appraisal systems which provided notice to employees of the critical elements of their positions and of performance standards. In effect, it reinforced the need to restrict appraisals to performance related considerations separate and apart from disciplinary matters. The FBI took exception to certain provisions in a proposed Department of Justice order on performance appraisal and requested an exemption and authority to design an appraisal system consistent with the needs of the Bureau. This request was approved and our own Performance Appraisal System (PAS) was subsequently approved by the Department and the Office of Personnel Management (OPM).

The original PAS had seven performance levels to permit rating officials to discriminate among levels of performance. In conducting research toward the design of the PAS, it was discovered that over 99% of supervisors and management officials were rated Excellent or Outstanding and one of the major criticisms of the four level rating system was that there was virtually no means of distinguishing among levels of performance. Offices were required to identify employees' critical elements and set performance standards for three of the five positive performance levels in the system. A uniform method of determining the overall adjective rating levels was prescribed to minimize conflicts between, and variations among, rating officials.

Early criticisms of the seven level PAS, which operated for merit pay employees from January 1, 1981, through June 30, 1981, centered around the administrative burdens perceived in its application. In response to the concerns and criticisms voiced by rating and reviewing officials during training classes, the PAS was redesigned and streamlined before its implementation on July 1, 1981, and October 1, 1981, for nonsupervisory Agents and support personnel, respectively. The streamlining took the form of increasing the minimum time necessary for an appraisal from 90 to 120 days, reducing the number of required progress review sessions from three to two, reducing the number of performance levels from seven to six by eliminating one of the positive levels, and modifying the method of determining overall ratings.

Both the seven and the six level systems were reviewed and approved by the Department and the OPM. Further streamlining measures were proposed and approved in 1982. These changes involved the elimination of a negative performance level (Marginal) and the corresponding implementation of the administrative warning process, the elimination of required performance planning interviews and progress review sessions at the outset of and during the annual period, respectively, reducing requirements for special or administrative appraisals, and changing the submission dates of annual appraisals from various dates keyed to nonsupervisory employees' pay increase dates to a single date for Agents

(3/31) and for support personnel (9/30). The Department approved these changes. It was not necessary to seek OPM approval since the changes were not extensive in terms of the law and OPM regulations.

Since its implementation in 1981, and throughout the streamlining changes, the PAS has been used to support personnel decisions such as merit pay increases, within-grade increases, quality step increases, promotions, administrative advancement, retention in position, and reduction in grade or removal for unacceptable performance. Under FBI policy, employees have the right to respond to their appraisals and, through this process, have their concerns addressed by their reviewing officials. Failing satisfaction at this level, they have the right to submit a grievance to the Personnel Officer for final resolution.

Employees do not have any statutory or regulatory right to appeal their appraisals outside the Bureau. Employees do have rights to appeal certain personnel actions which were based on performance appraisal information. For example, a preference eligible employee who is reduced in grade or removed for unacceptable performance may appeal the reduction/removal to the Merit Systems Protection Board (MSPB). (Note: Non-preference eligibles in the excepted service have no such right to appeal.) Any employee whose within-grade increase is denied has the right to request internal reconsideration of that decision and, failing satisfaction in that process, may appeal the denial to the MSPB.

In conclusion, as late as 1973, the CSC had never agreed that our statutory exception from the competitive service was warranted. CSC's stated opinion was that the FBI has no unique requirements which cannot be accommodated within the competitive service. FBI procedures in the areas of recruitment, promotion and discipline often either parallel or would be compatible with civil service procedures. In the adverse action area, inclusion in the competitive service would extend appeal rights to the non-veteran employees of the Bureau who at present have no such protection. This would not mean the authority to discipline and remove unsatisfactory employees would be diminished. Moreover, the functions performed by the FBI are essentially the same as those performed by other law enforcement agencies which are under the competitive service.

As noted in the preceding pages, our excepted status gives the Director a certain amount of flexibility and discretion that would not be possible if the FBI were in the competitive service. Obtaining OPM authority to take certain personnel actions, where very specific details of our operations would be necessary to gain the required approvals, would be extremely difficult in view of the very confidential and sensitive nature of our work. Further, our possible inability to release confidential material on an adverse action matter could result in a reversal of the action that we viewed as necessary to the continued efficient operation of the FBI.



The historical basis of the Central Intelligence Agency being excepted from the competitive service was and is the fact that CIA functions and activities require stringent secrecy and security measures. It is recognized that the accomplishment of intelligence activities requires special authorities and exceptions from normal Government procedures and requirements. CIA is also exempt from reporting and publishing requirements, which, among other things, enable the Agency to avoid disclosure of certain persons as CIA employees.

Certainly, the above is also true for the FBI. As the Government's agency responsible for investigation of the preponderance of Federal criminal violations and with primary responsibility for domestic security and foreign counterintelligence, our statutorily excepted status for all FBI employees is vital for us to maximize management flexibility to fulfill our mandated responsibilities.